

Disenchanted? Business Satisfaction with International Arbitration

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Abstract:

Are businesses becoming disenchanted with international arbitration? The perception used to be that, by agreeing to arbitration, parties “trade[d] the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.” Now, according to some, arbitration has become the “new litigation,” with commentators complaining of the “judicialization” and “creeping legalism” of arbitration. Anecdotal statements of dissatisfaction with arbitration (international or otherwise) are common, including reports of businesses removing arbitration clauses from their form contracts and even “company-wide bans on arbitration clauses.”

Part I takes an empirical look at the “judicialization” of arbitration, considering evidence of changes in the procedural nature of international arbitration and the extent of court review of arbitral awards. Part II then examines the empirical evidence on party disenchantment — to what extent are parties systematically moving away from arbitration as a means of resolving transnational disputes?